

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In Banc

FARMERS INVESTMENT COMPANY,
a corporation,

Appellant,

v.

ANDREW L. BETTWY, as State Land
Commissioner, and the STATE LAND
DEPARTMENT, a Department of the
State of Arizona, and PIMA MINING
COMPANY, a corporation,

Appellees.

FARMERS INVESTMENT COMPANY,
a corporation,

Appellant,

v.

THE ANACONDA COMPANY, a corporation;
AMAX COPPER MINES, INC., THE ANACONDA
COMPANY as partners in and constituting
ANAMAX MINING COMPANY, a partnership,

Appellees.

CITY OF TUCSON, a municipal corporation,

Appellant,

v.

ANAMAX MINING COMPANY, and DUVAL
CORPORATION and DUVAL SIERPITA
CORPORATION,

Appellees.

Appellees, The Anaconda Company and Amax Copper Mines,
Inc., as partners in Anamax Mining Company, Anamax Mining
Company, Duval Corporation, Duval Sierrita Corporation and
Cyprus Pima Mining Company, and appellant City of Tucson move
the Court to strike the document entitled "A Proposal by FICO",
for the reasons that the document

FILED

NOV - 5 1976

CLIFFORD H. WARD
CLERK SUPREME COURT

BY

No. 11439-2

JOINT MOTION TO
STRIKE FICO's
"PROPOSAL", AND
MEMORANDUM

1 1. Is not a pleading permitted by the rules or
2 addressed to the proper exercise of the appellate jurisdiction
3 of this Court;

4 2. Purports to be an offer in compromise, which
5 should not in propriety be addressed to the Court;

6 3. Invites, by innuendo, inaccurate assumptions by
7 the Court concerning (i) appellees' and the City's long and
8 vigorous efforts to augment and conserve the water supply in
9 the Upper Santa Cruz Valley, and (ii) the efforts of the appel-
10 lees to dispose of the litigation by concord.

11 MEMORANDUM

12 FICO's "Proposal" should be struck from the record
13 in this case because, characterized as a pleading, it is not
14 addressed to the proper exercise of the appellate jurisdiction
15 of this Court. Taken as an offer in compromise and settlement,
16 it cannot in propriety be addressed to the Court.

17 In this case the Supreme Court's original jurisdiction
18 has not been invoked. It cannot be invoked, FICO having com-
19 menced its action for injunction and damages in the Superior
20 Court. This case is presently before the Court on appeal.

21 There are now pending Motions for Rehearing and Memoranda filed
22 by the respective parties and briefed by numerous amici curiae.

23 This Court must grant or deny rehearing, with ultimate
24 return of the cause to the trial court for such hearings and
25 orders as shall flow from this Court's disposition. The proper
26 function of the trial court is to fully hear and determine the
27 numerous and complex historic, hydrologic and economic facts
28 which bear upon the numerous questions at issue below. That
29 is not the function of this Court as an appellate tribunal.

30 The so-called "Proposal" is another effort by FICO to
31 avoid a determination of the legal issues. There has never been
32 a trial. FICO has consistently attempted to short cut evidential

1 hearings in order to have the case decided in a factual void.

2 Appellees and the City cannot, in propriety, even on
3 this Motion, address the merits of the Proposal which is on its
4 face an offer in compromise. Settlement discussions, if offered
5 in evidence, would be deemed inadmissible in any forum. Surely
6 then, a self-serving settlement offer, unilaterally presented
7 to the Court, is inappropriate. Such a filing is, at the very
8 least, an imposition upon the Court. Hence, no response will
9 be made to the specific points of the "offer", since to do so
10 would involve the Court in private matters between parties whose
11 disputes this Court is called upon to decide. Suffice it to
12 say that economic accords have been attempted; that the City
13 and mining company appellees have long been and now are engaged
14 in efforts to utilize sewage effluent; and that the City and the
15 mining company appellees have heretofore made formal written
16 requests for CAP water delivery contracts.

17 It can only be assumed that FICO's Proposal was made
18 for the purpose of diverting the Court from its duty to decide
19 the matters pending in this case. The refusal to challenge pur-
20 ported facts asserted by FICO or to rebut inferences that may be
21 drawn from them is not to be taken as an accession to any such
22 fact or inference. This refusal is no more than a recognition of
23 the impropriety of engaging those issues before this Court.

24 Even if FICO's Proposal were a bona fide offer in com-
25 promise, it is improperly directed to this appellate Court which
26 must decide the ultimate issues. By innuendo, the Proposal
27 invites the Court to make inaccurate and highly prejudicial
28 assumptions in irreconcilable conflict with the real facts.
29 The Court should reject this invitation.

30 Appellees and the City respectfully move that the
31 Proposal be struck, and request the Court, in view of the magni-
32 tude of the problems before it, to proceed with the exercise of

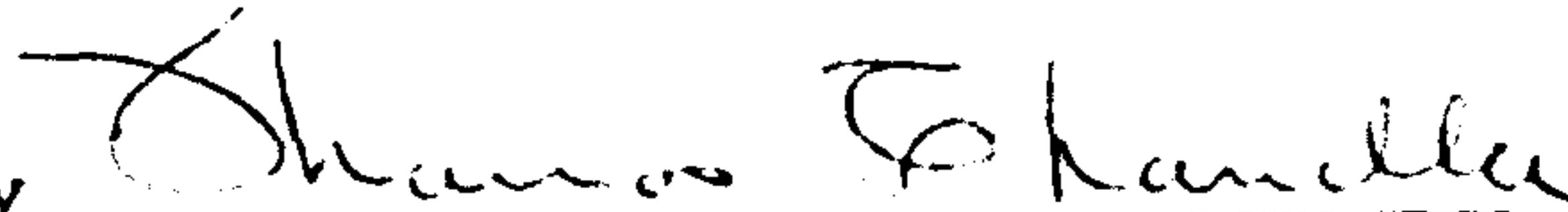
1 its appellate jurisdiction and rule on the several Motions
2 for Rehearing with all deliberate haste, maintaining its
3 proper and historic posture as the State's highest appellate
4 Court.

5
6 DATED this 5th day of November, 1976.

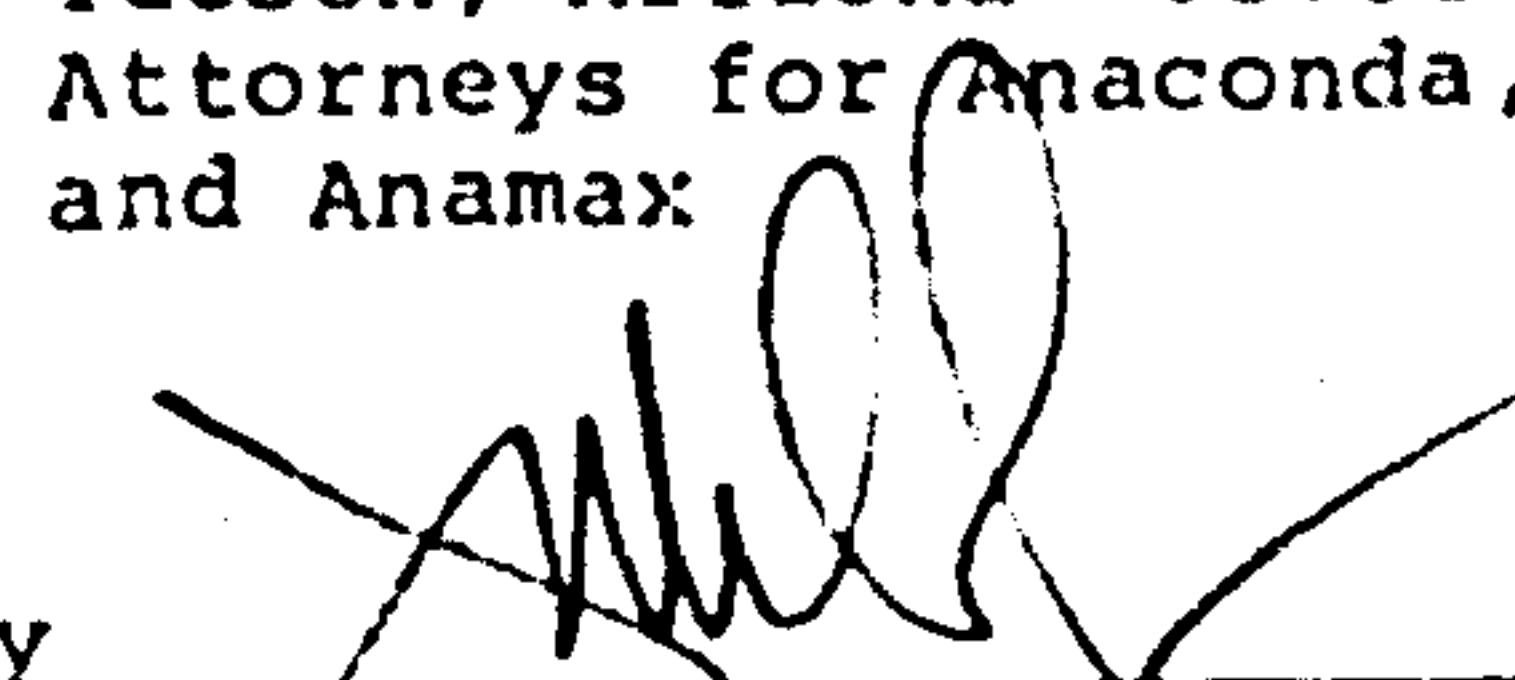
7
8
9
10 Respectfully submitted,

11 CHANDLER, TULLAR, UDALL & RICHMOND

12
13 By

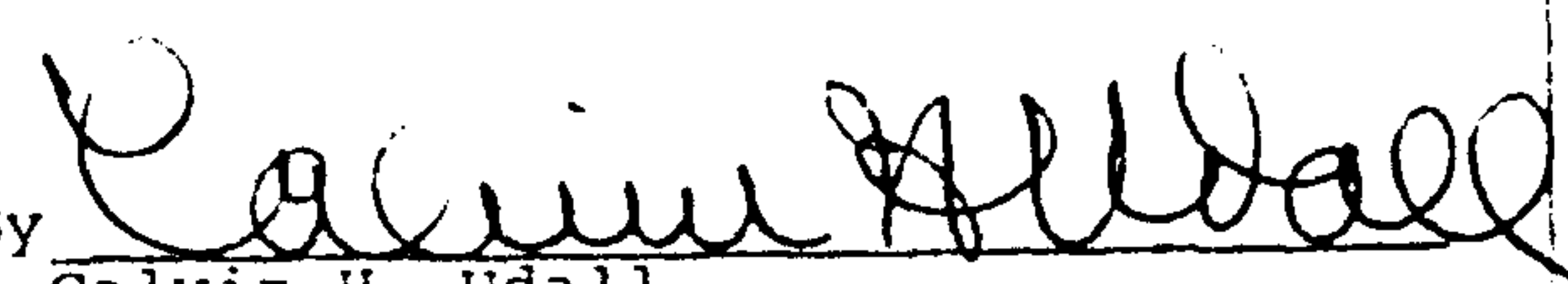

Thomas Chandler
1110 Transamerica Building
Tucson, Arizona 85701
Attorneys for Anaconda, Amax
and Anamax

14
15
16
17 By


James D. Webb, City Attorney
Steven B. Weatherspoon,
Assistant City Attorney
P.O. Box 27210
Tucson, Arizona 85726
Attorneys for City of Tucson

18
19
20
21
22 FENNEMORE, CRAIG, von AMMON & UDALL

23
24 By


Calvin H. Udall
James W. Johnson
100 West Washington, Suite 1700
Phoenix, Arizona 85003
Attorneys for Duval Corporation
and Duval Sierrita Corporation

VERITY, SMITH, LACY, ALLEN &
KEARNS, P.C. and
MUSICK, PEELER & GARRETT

By Gerald G. Kelly
Gerald G. Kelly
One Wilshire Boulevard, Suite 2000
Los Angeles, California 90017
Attorneys for Cyprus Pima Mining
Company

1 STATE OF ARIZONA)
2 County of Maricopa) ss.

3 CALVIN H. UDALL, being first duly sworn says:

4 Affiant mailed two copies of the foregoing Appellees'

5 Joint Motion to Strike FICO's 'Proposal', and Memorandum to:

6 Peter C. Gullato, Esq.
7 Assistant Attorney General
8 159 Capitol Building
9 Phoenix, Arizona 85007
10 Attorneys for State Land Department

11 Mark Wilmer, Esq.
12 Snell & Wilmer
13 3100 Valley Center
14 Phoenix, Arizona 85073
15 Attorneys for Farmer Investment Company

16 The Honorable Bruce E. Babbitt
17 The Attorney General for the State of Arizona
18 200 State Capitol
19 Phoenix, Arizona 85007

20 Burton M. Apker, Esq.
21 Evans, Kitchel & Jenckes
22 363 North First Avenue
23 Phoenix, Arizona 85003
24 Attorneys for ASARCO Incorporated

25 Bill Stephens, Esq.
26 Carmichael, McClue, Stephens & Toles, P.C.
27 1833 North Third Street
28 Phoenix, Arizona 85004
29 Attorneys for Municipal Water Users Association

30 Howard A. Twitty, Esq.
31 Twitty, Sievwright & Mills
32 1905 TowneHouse Tower
100 West Clarendon
Phoenix, Arizona 85013
Attorneys for AMIGOS

Thomas Meehan, Esq.
111 South Church Avenue
Tucson, Arizona 85701
Attorney for International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America, Local 310

Herbert L. Ely, Esq.
Ely & Bettini
904 Arizona Title Building
111 West Monroe
Phoenix, Arizona 85003
Attorneys for Arizona State AFL-CIO

31 . . .

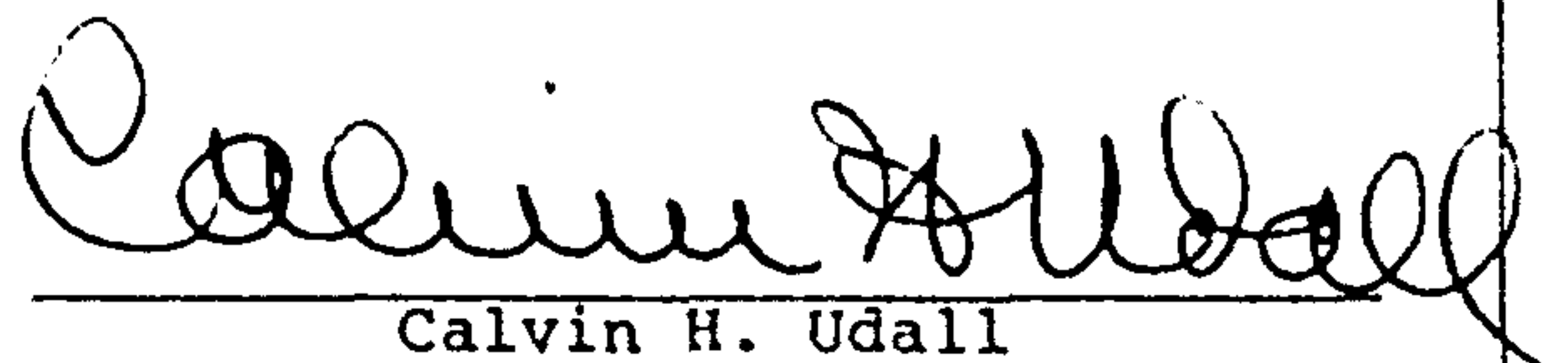
32 . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

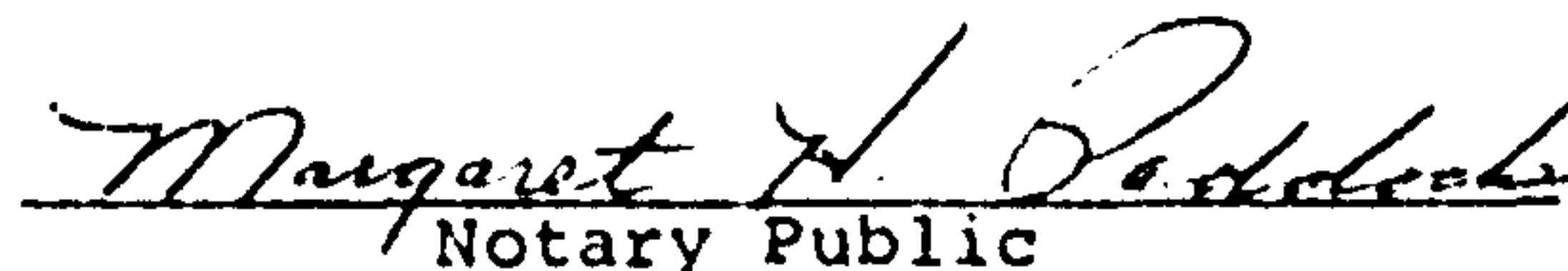
Elmer C. Coker, Esq.
Luhrs-Central Building, Suite J
132 South Central Avenue
Phoenix, Arizona 85004
Attorney for W. W. Jarvis, et al.

Chester R. Lockwood, Jr.
City Attorney for the City of Prescott
125 East Gurley Street
Prescott, Arizona 86301
Attorney for the City of Prescott

properly addressed and postage prepaid, on November 5, 1976.


Calvin H. Udall

SUBSCRIBED AND SWORN TO before me this 5th day of
November, 1976.


Notary Public

My commission expires:
Oct. 31, 1977

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

ss:

I Antonio Bucci hereby certify:
Name

That I am Reference Librarian, Law & Research Library Division of the Arizona State
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:

Arizona Supreme Court, Civil Cases on microfilm, Film #36.1.764, Case #11439-2, Joint Motion to Strike FICO's "Proposal", and Memorandum, pages 699-705 (7 pages)

The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s) on file.

Antonio Bucci
Signature

Subscribed and sworn to before me this 12/15/05
Date

Elta Louise Muir
Signature, Notary Public

My commission expires 04/13/2009
Date

